IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

WP(C).No. 9653 of 2006(Y)

PETITIONER:

THE KONDOTTY PRODUCERS-CUM-CONSUMERS
AGRICULTURAL MARKETING & PROCESSING CO-OPERATIVE
SOCIETY LTD., NO.F.1188 KONDOTTY-673 638,
MALAPPURAM DISTRICT, REP. BY ITS SECRETARY.

BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.P.V.LOHITHAKSHAN
SMT.P.VIJAYAMMA
SMT.UMA GOPINATH
SRI.DEVIDAS.U.K

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
ADDL.SECRETARY TO GOVERMENT, CO-OPERATION (C)
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE REGISTRAR OF CO-OP. SOCIETIES,
THIRUVANANTHAPURAM.

3. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL), MALAPPURAM.

4. M. VELUKUTTY, S/O. KUNDAN,
MADATHIL HOUSE, ELAYOOR,
MALAPPURAM DISTRICT.

5. T. ALI, S/O.KUNHAYINKUTTY,
THODUKARA HOUSE, PUTHALAM, AREACODE,
MALAPPURAM DISTRICT.

6. P. AYAMMU, S/O. MAMMAD HAJI,
CHELAKKODE HOUSE, OORANGATTIRI,
MALAPPURAM DISTRICT.

7. P.K. ABDUL LATHEEF, S/O. MAMMAD,
KAKKUZHIKUNNATH HOUSE, KUNIYIL KEEZHUPARAMBU,
MALAPPURAM DISTRICT.

8. T. ABU, S/O. KUNHAYINKUTTY,
THUNHIYIL HOUSE, PUTHALAM, AREACODE,
MALAPPURAM DISTRICT.

9. P. ALIKUTTY, S/O. AYAMMU,
CHELAKKODE HOUSE, OORANGATTIRI,
MALAPPURAM DISTRICT.

10. THE MALAPPURAM DIST.CO-OP.BANK LTD.,
HEAD OFFICE MALAPPURAM, REPRESENTED BY
ITS GENERAL MANAGER-IN-CHARGE,

BY ADV. SRI.BABU S. NAIR
SRI.P.J.ANILKUMAR
BY SENIOR GOVT. PLEADER SRI.P.N.SANTHOSH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1 TRUE COPY OF ORDER No.G.O.(Rt.) No.86/2001/ F&CSD DATED 29.3.2001 ISSUED BY THE DEPUTY SECRETARY, FOOD & CIVIL SUPPLIES (B) DEPARTMENT OF THE GOVT. OF KERALA.

EXT.P2 TRUE COPY OF LETTER NO.HMC.4769/2001/K.Dis DATED 29.3.2003 OF THE 3RD RESPONDENT.

EXT.P3 TRUE COPY OF LETTER NO.HMC 1559/2005/02 DATED 22.3.2005 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P4 TRUE COPY OF JUDGMENT DT. 11.2.2005 OF THE HIGH COURT OF KERALA IN OP.NO.867/2003.

EXT.P5 TRUE COPY OF THE LETTER DATED 13.4.2005 OF THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P6 TRUE COPY OF ORDER NO.HMC/1559/2005 DATED 25.4.2005 OF THE 3RD RESPONDENT.

EXT.P7 TRUE COPY OF LETTER DATED 4.5.2005 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P8 TRUE COPY OF THE JUDGMENT DATED 17.5.2005 OF THE HIGH COURT OF KERALA IN W.P.(C) NO.14567/2005.

EXT.P9 TRUE COPY OF MEMORANDUM OF APPEAL DATED 1.6.2005 FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT WITHOUT ANNEXURES THERETO.

EXT.P10 TRUE COPY OF THE G.O.(RT) NO.95/2006/CO-OP. DATED 1.3.2006.

//TRUE COPY//

P.A. TO JUDGE.

J.M. JAMES, J.

W.P.(C) No. 9653 of 2006

Dated this the 21st November, 2006.

J U D G M E N T

Respondents 4 to 9 were working under the writ petitioner, Society. They were entitled to gratuity, arrears of D.A., security amounts given by them to the Society, bonus for two years, and salary from 1.5.2000 to 30.7.2001, and also the amount for the surrendered leave from the Society, which the petitioner society fail to pay, despite demand. In the year 2003, through O.P.No.867/2003, respondents 4 to 9 herein, came up before this Court. On 11.2.2005, this Court directed the 3rd respondent herein, the Joint Registrar of Co-operative Societies (General), as well as the Assistant Registrar to proceed against the writ petitioner, Society and its assets, and also to clear the dues to respondents 4 to 9. It was further directed that the same be done, within three months, from the date of production of a copy of the judgment. But the facts reveal that no amount has so far been paid to respondents 4 to 9.

2. The petitioner Society went in appeal before the Government of Kerala, and, through Ext.P10, the appeal was disposed of directing, inter alia, as agreed by respondents 4 to 9, to settle the

matter by paying the amounts due to respondents 4 to 9, in three instalments by the writ petitioner, the first instalment being paid within one month from the date of issuance of Ext.P10 order, which was dated 1.3.2006.

3. The learned counsel appearing for the petitioner, however, submitted relying on Ext.P10 that the petitioner was directed to follow up with the 10th respondent, the Malappuram District Co-operative Bank Ltd., and also the Registrar of Co-operative Societies, Thiruvananthapuram, to get the sanction to sell the assets of the writ petitioner, Society, and make payments to respondents 4 to 9. Counsel further submitted that because of the want of appropriate sanction from the Registrar of Co-operative Societies, the sale of the assets of the writ petitioner Society could not take place, although 10th respondent is prepared to pay higher amount, to enable the petitioner Society to over come the situation of paucity of funds, in meeting with the demands of respondents 4 to 9, as well as the other debtors.

4. Ext.P10 reveal that an amount of Rupees Two Crores as on 2001-2002 was the loss suffered by the petitioner Society. Respondents 4 to 9 had been running around for getting their

dues cleared by the Society. As submitted by the counsel for the writ petitioner, and as discussed above, there are others also waiting to get their dues from the petitioner Society. Therefore, in such circumstances, an indefinite wait by them, is to be avoided.

5. The prayer of the petitioner is to quash Exts.P6 and P10. But that would further create problem, not only to respondents 4 to 9, but also to others. It is needless to remind here that Ext.P4 judgment in O.P.No.867/2003 is pending, without the same being effected. If respondents 4 to 9 had magnanimously agreed to settle the matter, and accept the dues in three instalments, as discussed in Ext.P10 order, the authorities concerned, including the petitioner Society, ought to have taken all necessary hasty steps to ensure that the assets are sold at a profitable market price, and the sale proceeds are utilised for wiping out the dues of the Society.

6. In such circumstances, I dispose of the writ petition, directing that the 3rd respondent, the Joint Registrar of Co-operative Societies, to conduct a public auction of the property comprised in R.S.No.134/18 of Kondotty Village, as covered by Ext.P2 order, of the petitioner Society, as required to clear the debts due to respondents 4

to 9, without waiting for any further clarification from the Registrar, as permission had already been granted under Ext.P2. If the 10th respondent, the Malappuram District Co-operative Bank Ltd. is prepared to buy the same, they may be also permitted, but the same shall only be through a public auction. The formalities for the above arrangement shall be done within three months from today.

7. Immediately on completion of the public auction and sale of the properties, as covered under Ext.P2, the dues to respondents 4 to 9 shall be distributed to them, without any delay. If any balance amount is left, after clearing the dues of respondents 4 to 9, the same shall be handed over to the writ petitioner, Society, so that the Society could utilise it for clearing the dues of other debtors on priority basis.

J.M. JAMES,
JUDGE

nj.